



Human rights litigation on behalf of the Roma

A guide for lawyers



*With financial support from the Fundamental Rights and
Citizenship Programme of the European Union
Project Code Number: JUST/2012/FRAC/AG/2848*



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Drafted by:

Ágnes Csonta (C)

Delia-Luiza Niță (A, B, D)

Centre for Legal Resources (Romania)

Date: July 2014

Disclaimer:

This project has been funded with support from the European Commission. This publication reflects the views of the authors only and the Commission cannot be held responsible for any use which may be made of the information contained therein.

Layout and printing: Pardedós.



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Introduction

The NET-KARD Project

The main aim of the *Net-Kard Project: Cooperation and Networking between Key Actors against Roma Discrimination* is to prevent discrimination of Roma communities and to improve assistance to victims by promoting cooperation and networking among the key players involved in defending the right to equality and by improving and transferring the already existing body of methodological experience in this connection to the different countries taking part in the project.

This project is under the umbrella of the *Fundamental Rights and Citizenship Programme of the European Union* and involves the following partners: Fundación Secretariado Gitano (lead partner, Spain), Portuguese European Anti-Poverty Network (EAPN Portugal) (Portugal); High Commission for Immigration and Intercultural Dialogue (ACIDI, I.P.) (Portugal), Centrul de Resurse Juridice (CRJ) (Romania), Fundatia Secretariatul Romilor (Romania), Ufficio Nazionale Antidiscriminazioni Razziali (Italy), and Istituto Internazionale Scienze Mediche Antropologiche e Sociali (Italy)

Aim of the Guide

For the purposes of this guide, designed for lawyers, a number of focus groups and information gathering activities were organized in the participating countries with legal practitioners who have engaged in work on Roma rights. Their insights and conclusions are important to understand the climate surrounding the defence of Roma rights and what needs to be done. In addition to the focus groups (a starting point for the drafting of this guide), the authors conducted desk research in relation to the specific chapters included. Given the objective of having a

guide which can be relevant for an EU-wide audience, we did not focus on the countries in the project and used the information from focus groups only to the extent to which it seemed to be valid to other countries as well.

The objective of the guide was to gather in a relatively succinct and concise written material sufficient information for lawyers who would want to get involved in pursuing a type of litigation which leads to winning not only cases, but also human rights causes. The guide focuses on **Roma rights litigation as a social justice cause**, but it can be relevant for other social justice causes and for providing legal services to vulnerable, discriminated against persons in general.

We begin by arguing why there is a dire need for lawyers, as professionals, to become more involved in supporting Roma to uphold their rights, and then we mention the types of problems and barriers which can be encountered in doing such work. We continue by briefly outlining how the law can be used to protect Roma rights. We include practical advice and recommendations as we advance into this chapter. Next we include a comprehensive chapter on relevant legislation and case-law. The Good Practice section serves the purpose of signalling good ideas with the potential for system-wide impact on rights defence. A small glossary has also been appended at the end of the guide. We do not intend to be exhaustive, but rather to provide a place to start. We have included a number of links and recommendations throughout the guide for further reading, our intention being to get our readers interested in different aspects of discrimination case litigation and then leaving it to them to go further depending on their specific needs.

Lastly, we would like to launch an appeal to all lawyers in Europe and elsewhere to consider their role in society as a very important one for implementing and preserving the rule of law and democracy and for a better and more socially cohesive society for us all, regardless of our differences. The goal of achieving a just society depends on the active involvement of lawyers, a uniquely equipped professional group for this purpose, on their engagement in social justice causes, in defending the most vulnerable and often destitute, those most rejected in Europe, including, although not limited to, EU's largest ethnic minority: the Roma minority.

A. The need for Roma rights litigation

The Roma are EU's largest ethnic minority, numbering between 10-12 million in the World with approximately 6 million living in the EU. The EU acknowledges that, despite the fact that discrimination is legally prohibited, many Roma are the victims of prejudice and social exclusion.¹

Fighting for Roma equality is therefore primarily a social justice cause. The Roma continue to face social exclusion, ethnic violence and discrimination throughout Europe, ranging from being pushed to slum conditions where children have no clothing, barely have food to survive, and have never gone to school², moved around by local authorities as if they were objects to places endangering their health, lacking the support services available to any non-Roma citizen, to racial attacks³, to segregated schools policies to channel Roma children to special schools (schools for children with intellectual or learning disabilities)⁴. These are all policies practiced with impunity in Eastern Europe against a clearly differentiated racial minority: the Roma. To make matters worse, while in different degrees, and with more limited public success, particularly Eastern European Roma

1.- European Commission, D.G. Justice, *EU and Roma*, available at: http://ec.europa.eu/justice/discrimination/roma/index_en.htm. (**Note: All the hyperlinks provided in this guide were last accessed on 20 May 2014.**)

2.- Antena3 (2011), *In premeiera – Pe-un picior de iad (On the foothill of Hell)*, 20.11.2011, award-winning documentary on the situation of the poorest Roma in Romania, available at: <http://inpremeiera.antena3.ro/reportaje/pe-un-picior-de-iad-76.html>.

3.- European Roma Rights Centre (2012) *Attacks against Roma in Hungary, the Czech Republic and the Slovak Republic*, 15.07.2012, available at: <http://www.errc.org/article/attacks-against-roma-in-hungary-the-czech-republic-and-the-slovak-republic/3042>.

4.- UNICEF (2009), *When “Special” Means “Excluded”*, available at: <http://www.romachildren.com/wp-content/uploads/2011/11/When-Special-Means-Excuded.pdf>.

have, in the past years, become targets of populism and human rights abuses in Western European democracies as well.⁵

The centuries-old exclusion has resulted in pervasive poverty, with a wide gap between the incomes of majority and Roma households. According to the World Bank, in Eastern Europe, 71 per cent or more of Roma households live in deep poverty. The prospects of graduating secondary school are 29 per cent at most for Roma with girls having even bleaker prospects. Less than half of all Roma men and a quarter or less of all Roma women manage to find a job.⁶ Roma become trapped not only in the vicious circle of discrimination, but also in the vicious circle of poverty, both extremely difficult to escape from.

It therefore stands to reason that, in most cases, Roma do not have financial resources and the capacity needed to engage in lawsuits before national and international courts to defend their rights. While not the only option, litigation remains one of the most effective tools for protecting Roma rights and receiving compensation for their violation and for bringing about change. A number of human and Roma rights NGOs engage in strategic litigation activities in order to promote and protect the rights of persons belonging to the Roma communities, but, they also often lack financial and human resources. Moreover, there is a great need for well-prepared lawyers to provide legal assistance and represent Roma persons. The Central and Eastern European Countries in particular lack a tradition of pro bono practiced by their bar associations. Also, there may be bar association rules which do not allow the provision of legal services outside the context of private law offices, effectively hampering the possibility of providing pro bono services to the most vulnerable.⁷ Therefore, a stronger pro bono culture in all EU countries is crucial to upholding Roma rights.⁸

5.- John Lichfield (2013), "Roma – the unwanted Europeans" in *The Independent*, 27.10.2013, available at: <http://www.independent.co.uk/news/world/europe/roma--the-unwanted-europeans-8906382.html>.

6.- World Bank, Europe and Central Asia (2014), *Brief. Roma*, available at: <http://www.world-bank.org/en/region/eca/brief/roma>

7.- Goldston, James A and Adjami Mirna (2008) *The Opportunities and Challenges of Using Public Interest Litigation to Secure Access to Justice for Roma Minorities in Central and Eastern Europe*, Preliminary Draft, Subject to revision, Prepared for World Justice Forum, Vienna, July 2-5, 2008, pp. 14-15, retrieved from: http://www.lexisnexis.com/documents/pdf/20080924043559_large.pdf

8.- Access of persons belonging to vulnerable groups to legal aid services, as well as the culture

What is many times extremely difficult to overcome are the effects and obstacles which prejudice and discrimination pose. In most of the countries where Roma live (Central and Eastern Europe) discrimination remains intense, perpetuating the exclusionary mechanisms which Roma are subjected to. In these countries, evidently, not even the wrongfulness (even less the destructiveness) of discrimination against the Roma is admitted or understood, let alone assumed and confronted. Discriminatory attitudes towards the Roma are part of the culture and become learned through socialization. It may also be the case that the Roma themselves do not have a very clear awareness and understanding of the injustice they are being subjected to.

In addition, bias is also present within the legal profession itself,⁹ while there are very few Roma jurists within the profession also.¹⁰ Lawyers in these countries, particularly if they are not part of the Roma minority themselves must take a close look at their own biases and receive training in the areas of cultural competence, anti-discrimination, prejudice and stereotype formation. This will not only make them better litigators, but it will also give them an adequate understanding of their clients' situations.

General findings in the area of social psychology point to the negative effects of discrimination and prejudice on their victims.¹¹ While one must not over generalize and presume that all victims of discrimination are affected in the

and practice of pro bono legal assistance differs across the EU countries. For a presentation of the legal framework regarding legal aid, needs for legal representation, pro bono opportunities, barriers to pro bono work as well as pro bono resources in each EU member state but also in other countries see Latham & Watkins LLP (2012) *A Survey of Pro Bono Practices and Opportunities in 71 Jurisdictions*, available at <http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>.

9.- See for example ECtHR case *Moldovan and Others v. Romania* (no. 2), Application nos. 41138/98 and 64320/01, Judgment date 12 December 2005, where the Court also found a breach of Article 14 on account of biased remarks made within the national legal proceedings as well as of the length and result of these proceedings where the Roma ethnicity of the applicants played a role in the Court's view.

10.- Goldston, James A and Adjami Mirna (2008) *The Opportunities and Challenges of Using Public Interest Litigation to Secure Access to Justice for Roma Minorities in Central and Eastern Europe*, Preliminary Draft, Subject to revision, Prepared for World Justice Forum, Vienna, July 2-5, 2008, p. 3, retrieved from: http://www.lexisnexis.com/documents/pdf/20080924043559_large.pdf

11.- David G. Myers (2002), *Social Psychology*, McGraw Hill, pp. 367-373

same way, it is important for those taking up discrimination cases to be aware of its underlying psychological mechanisms and effects.

Also, stereotype and prejudice research can and has been used in courts of law to litigate successfully on behalf of victims.¹² Lawyers can work with NGOs and experts to bring this type of evidence before a court, but they must also be aware of the general understanding of discrimination in the respective society.

It should come as no surprise that one of the effects of discrimination is reluctance on the part of those facing discrimination to interact with the government system; naturally they have little faith that the state will treat them on an equal footing with all other citizens. Therefore, although Roma experience high degrees of discrimination, they tend to report it less, one of the reasons being that they do not trust that justice will be done. According to a 2008 survey done by the EU Agency for Fundamental Rights (FRA) in which 3.500 Roma subjects in seven countries (CZ, HU, PL, EL, SK, BG, RO) participated, between 66% and 92% of the Roma did not report their most recent experience of discrimination, mainly on account of the fact that they believed that nothing would change, and between 65% and 100% did not report hate crimes mainly because they did not trust that the police would be able to do anything about it. Also, 86% of the Roma surveyed could not name an organization able to assist them if they were discriminated against.¹³

While the strength of the civil society fighting racism in each country determines the type of support that Roma receive, legal support is also highly dependent on the human rights culture within each country's legal profession and on the availability of lawyers to engage in human rights work. Furthermore, Roma trusting that justice will be done onto them also is directly proportional to the actual number of instances where justice is actually delivered to the Roma people. Therefore, in the case of the Roma, it is clear that the human rights breaches against them and the low level of reporting determined by the lack of trust in a

12.- See for example United States Courts, *History of Brown v. Board of Education*, available at: <http://www.uscourts.gov/educational-resources/get-involved/federal-court-activities/brown-board-education-re-enactment/history.aspx>.

13.- European Union Agency for Fundamental Rights (FRA) (2009), *EU MIDIS, Data in Focus, The Roma*, p. 3, available at: http://fra.europa.eu/sites/default/files/fra_uploads/413-EU-MIDIS_ROMA_EN.pdf

positive outcome indicate a serious gap which could be narrowed also through more and effective legal representation.

Combating discrimination and particularly hate crimes against Roma is vital not only for the Roma community as a whole but also for society as a whole, since hate crimes, unlike regular crimes, have an especially destructive effect not only on the individual directly affected, but also on those surrounding her/him and on the wider society. As the European Court of Human Rights (ECtHR) put it in a landmark case regarding violence against the Roma: “Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights”.¹⁴

Hate crimes are criminal offences committed with a bias motive. The crime may be against a person or a group of persons or against property associated with the specific person or group defined in relation to a certain protected characteristic.¹⁵ Hate crimes are defined as identity crimes since they target an aspect of the target’s identity which is unchangeable (eg.: ethnicity, disability, sexual orientation, gender) or fundamental (eg.: religion) to one’s sense of self.¹⁶ Protected characteristics, aside from their inherent importance to the person’s sense of self, are those which, if conceived in terms of negative value, are powerful enough to structure a particular society and have the potential to trigger social fissures and influence the social status of the persons so defined.¹⁷

At an individual level, hate crimes send the message that the person was not the victim of random crime, but that it was her/his inherent identity - which cannot be changed - that determined the violence. The victims also know that they remain just as vulnerable in the future since there are people out there who believe that their rights matter less simply because of who they - the victims - are. Such knowledge has tremendous psychological effects on victims, but

14.- European Court of Human Rights, *Nachova and others v. Bulgaria*, No. 43577/98 and 43579/98: *Judgement of the Grand Chamber of 6 July 2005, para. 160.*

15.- OSCE, ODIHR (2009), *Hate crime laws. A practical guide*, p. 16, available at: <http://www.osce.org/odihr/36426>

16.- *Ibid.* p. 38.

17.- EU Agency for Fundamental Rights (2012) *Making hate crime visible in the European Union: acknowledging victim’s rights*, p. 23, available at: http://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf.

also a powerful sense of violation and humiliation.¹⁸ At group level, the message sent is that all those sharing that characteristic may become victims as well. Particularly in communities which have a history of discrimination, this effect can be multiplied.¹⁹ Furthermore, if left unaddressed and unpunished, hate crimes send the message to those who hold the same views as the offender that they too could escape punishment should they also act on their beliefs.²⁰ From a security perspective, hate crimes can exacerbate existing tensions with a potentially explosive impact.²¹ Finally, hate crimes can reinforce long-held prejudice at societal level as they reflect “inbuilt tendencies and predispositions of societal structures” and go against the fundamental rules of a democratic society which, inter alia, say that diversity should be valued.²²

A worrisome message comes from the EU Agency for Fundamental Rights which drew attention to indicators showing that the situation of discrimination and intolerance (hate crime included) in the EU has not improved, quite to the contrary. The Agency has witnessed continued and renewed violations (verbal abuse, physical attacks or murders) motivated by prejudice.²³ The need for qualified lawyers to effectively challenge this reality, together with NGOs and law enforcement is all the more pressing.

During the focus-groups organized for the purposes of this project, a number of more general or very specific barriers have come up, among which:

- low awareness of and sensitivity to discrimination against Roma among legal professionals;

18.- *Ibid.*, pp. 20-21.

19.- OSCE, ODIHR (2009), *Hate crime laws. A practical guide*, p. 20, available at: <http://www.osce.org/odihr/36426>

20.- EU Agency for Fundamental Rights (2012) *Making hate crime visible in the European Union: acknowledging victim's rights*, p. 22, available at: http://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf

21.- OSCE, ODIHR (2009), *Hate crime laws. A practical guide*, pp. 20-21, available at: <http://www.osce.org/odihr/36426>

22.- EU Agency for Fundamental Rights (2012) *Making hate crime visible in the European Union: acknowledging victim's rights*, pp. 23-24, available at: http://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf.

23.- *Ibid.*, Foreword by FRA director, p. 3.

- prejudice towards the Roma and explaining away the problems they face (implying that Roma would generally be responsible for their own situation);
- segregation of Roma;
- low general awareness of anti-discrimination legislation;
- persistent high degree of permissiveness, indolence and impunity when it comes to racism and discrimination towards the Roma community;
- Roma victims are in most cases extremely vulnerable and disempowered in taking action to defend their rights;
- victims are reluctant to lodge complaints, fearing both retaliation from the perpetrators and of the attitude of their own community which may consider that no action should be taken since it would be pointless and would only cause unnecessary additional problems;
- drawn out legal proceedings in general in some countries which may take even longer when Roma are victims;
- a number of professions and professionals (eg. educators, physicians, journalists) may harbour discrimination and lack strong professional ethics which would make them sanction those among their members who discriminate, thus resulting in scant self-regulatory power of professions in general;
- in some countries, weak or apathetic equality bodies which, given their specific role and public expectations of them, can even act as a barrier when they fail to fulfil their role in cases of discrimination, reinforcing the idea that the status quo is the correct one.

A larger number of better prepared lawyers, actively working bring cases of Roma discrimination and rights violations before courts, would help to effectively dismantle these barriers. More well-argued cases reaching courts and/or equality bodies would raise general awareness on the law, but also change people's notion of what is permissible and what is not. Given the fact that acting in accordance with long-held prejudice is often considered common-sense behaviour among those who discriminate, there is no better way to counter such ideas than the awareness that for acts based on similar beliefs someone was convicted. Winning cases would also help empower Roma as they would become aware that it is actually possible to win. Systemic problems of institutionalized racism itself can in their turn be the object of litigation, even before the European Court of Human Rights if necessary.

B. How to use legal means to protect Roma rights

In the context of advocacy campaigns employed in order to achieve social change, legal action is one of the tools, and many times it is employed as the last resort, representing one of the most confrontational actions, when everything else has failed.²⁴ However, given the situation of Roma discrimination in Europe, litigation does present itself as a necessary action in many cases, and, given the types of serious disparities in equality it may well be the “weapon of choice”.²⁵

Litigation on behalf of the Roma may take two general shapes: client litigation and strategic litigation,²⁶ depending on the specific change one wants to achieve. In client litigation, lawyers, usually employed by an NGO, will take all cases where Roma clients are in need of legal representation.²⁷ While clearly necessary to be able to speak of genuine access to justice, such litigation is unfortunately quite rare in the case of Roma, due to high costs and the weakness of civil society which is unable to cover the cost of such litigation, as well as a weak human rights pro bono culture on behalf of the Roma in most of the countries where they live. One remedial solution to this situation could be the existence and support of paralegals who would be able to legally assist communities. See the section on good practices for more details.

24.- Robert L. Schneider, Lori Lester (2001) *Social Work Advocacy*, Thomson Learning, p. 132.

25.- Goldston, James A and Adjami Mirna (2008) *The Opportunities and Challenges of Using Public Interest Litigation to Secure Access to Justice for Roma Minorities in Central and Eastern Europe*, Preliminary Draft, Subject to revision, Prepared for World Justice Forum, Vienna, July 2-5, 2008, p. 3, retrieved from: http://www.lexisnexis.com/documents/pdf/20080924043559_large.pdf

26.- European Roma Rights Centre, Interights, Migration Policy Group (2004) *Strategic litigation of race discrimination in Europe: from principles to practice*, Russell Press Limited, pp. 35-41, available at: <http://www.errc.org/cms/upload/media/00/C5/m000000C5.pdf>.

27.- *Ibid.* p.41.

The other type of litigation is what most Roma rights NGOs practice and it primarily targets policy and legal change. It is strategic because the case, through its particular facts, is representative for a broader number of people, or for a specific rights breach which happens with frequency, or for a problematic legal provision in need of change, or for a particular practice which must be changed. Therefore, the case will bring the problem to public attention.²⁸ In common law legal systems, if the case is won, it will establish an obligatory precedent. In civil law legal systems, the precedent will not be binding on a court subsequently hearing a similar case, but it will represent a strong incentive for the court to take it into account. Most Roma live in civil law legal systems.

Therefore, strategic litigation for Roma is generally part of larger advocacy campaigns.²⁹ In such campaigns, lawyers work with NGOs. While not a rule, NGOs are generally the ones to identify and document the cases which lawyers represent legally. Depending on the victim's interests and willingness to pursue legal remedy, the lawyer(s) and the NGO decide on the best legal strategy for the case and assess their success prospects, as well as the risks.³⁰ The NGO also supports the victim throughout the process.

NGOs also usually manage the relationship with the media and eventual partnerships. The case can be used as the cornerstone of an advocacy strategy aiming at legal or policy change/adoption. The NGO's role, together with the lawyer, is to explain to the general public the stakes at play in the case, why these stakes matter, and to work with the media to send the messages to the public. Some cases can be strategic simply because they provide the opportunity to bring important problems which need to be debated into the public arena, and they may be worthwhile pursuing for this reason alone,

28.- *Ibid.* pp 36-38 and Child Rights Information Network (2009), *Children's Rights: A Guide to Strategic Litigation*, London: CRIN, pp. 40-41, available at: <https://www.crin.org/en/library/publications/childrens-rights-guide-strategic-litigation>.

29.- See for example Łukasz Bojarski, Isabelle Chopin, Barbara Cohen, Uyen Do, Lilla Farkas and Romanița Iordache (2012) *Training manual on discrimination. Awareness raising seminars in the areas of non-discrimination and equality targeted at civil society organizations*, available at: http://www.migpolgroup.com/public/docs/2012%20-%20Training%20Manual_English.pdf.

30.- See European Roma Rights Centre, Interights, Migration Policy Group (2004) *Strategic litigation of race discrimination in Europe: from principles to practice*, Russell Press Limited, pp. 47-48, available at: <http://www.errc.org/cms/upload/media/00/C5/m000000C5.pdf>.

even if victory is not necessarily very likely.³¹ This being said however, it is rarely the case where one can knowingly afford to lose a strategic case on Roma rights. In the case of a very discriminated against community, losing the case would send a strong message to the majority of society which holds discriminatory beliefs that they are right in so doing, potentially reinforcing situations of discrimination and providing new impetus to those who want to keep things as they are.

Potential partners in strategic litigation cases can be other NGOs or networks both at national level and internationally, who support the case out of principle, but who can also support the case legally by intervening in the case through *amicus curiae*. They can also help the lead NGO and lawyer(s) in gathering relevant statistical data to be subsequently presented to the court.

The lawyer is key in all these steps, working together with the NGO and deciding how each additional action may impact or help the case.

Bringing a strategic case to court and the ensuing public debate around the problem the case ultimately addresses aim to persuade policy makers and legislators that a different approach is needed. These may not even wait until the case is finally decided in court to change the policy or to adopt the legal provisions necessary in order to start addressing the problem the case exemplified. In most cases however, policy and legislation change with great difficulty even when the case is won.³² It often takes more legal cases to determine change, and it is therefore important that victory is capitalized upon, that the case results are further advertised and introduced in legal training curricula, that monitoring of implementation happens and that the NGO which supported the case further foresees resources to ensure implementation.

Most of the above aspects are discussed in detail in a comprehensive guide on strategic litigation of race discrimination drafted by the European Roma Rights

31.- See Łukasz Bojarski, Isabelle Chopin, Barbara Cohen, Uyen Do, Lilla Farkas and Romanița Iordache (2012) *Training manual on discrimination. Awareness raising seminars in the areas of non-discrimination and equality targeted at civil society organizations*, available at: http://www.migpolgroup.com/public/docs/2012%20-%20Training%20Manual_English.pdf.

32.- Edwin Rekosh, Kyra A. Buchko, Vessela Terzieva (eds.)(2001), *Pursuing the Public Interest, A Handbook for legal Professionals and Activists*, New York: Public Interest Law Initiative in Transitional Societies, Columbia Law School, pp. 109-110, available at: <http://www.pilnet.org/public-interest-law-resources/35-pursuing-the-public-interest-a-handbook-for-legal.html>.

Centre, Interights and Migration Policy Group which we recommend consulting at: <http://www.errc.org/cms/upload/media/00/C5/m000000C5.pdf>.

Two other important resources are the Columbia Law School Public Interest Law Initiative in Transitional Societies (now PILnet), *Pursuing the Public Interest. A Handbook for Legal Professionals and Activists*,³³ available at: <http://www.pilnet.org/public-interest-law-resources/35-pursuing-the-public-interest-a-handbook-for-legal.html> and the Child Rights Information Network (CRIN), *Children's Rights: A Guide to Strategic Litigation*,³⁴ available at: <https://www.crin.org/en/library/publications/childrens-rights-guide-strategic-litigation>.

The PILnet handbook lists in a brief format the steps of litigation:

- Define the litigation goal;
- Choose the right defendant;
- Select the proper forum;
- Make creative use of legal arguments;
- Educate the court;
- Use outside experts and analysis;
- Work with NGOs;
- Rely on constitutional and international law;
- Consult specialized legal resource centres;
- Apply precedents;
- Access international courts.³⁵

33.- Edwin Rekosh, Kyra A. Buchko, Vessela Terzieva (eds.)(2001), *Pursuing the Public Interest, A Handbook for Legal Professionals and Activists*, New York: Public Interest Law Initiative in Transitional Societies, Columbia Law School, available at: <http://www.pilnet.org/public-interest-law-resources/35-pursuing-the-public-interest-a-handbook-for-legal.html>.

34.- Child Rights Information Network (2009), *Children's Rights: A Guide to Strategic Litigation*, London: CRIN, available at: <https://www.crin.org/en/library/publications/childrens-rights-guide-strategic-litigation>

35.- Edwin Rekosh, Kyra A. Buchko, Vessela Terzieva (eds.)(2001), *Pursuing the Public Interest, A Handbook for Legal Professionals and Activists*, New York: Public Interest Law Initiative in Transitional Societies, Columbia Law School, pp. 87-88, available at: <http://www.pilnet.org/public-interest-law-resources/35-pursuing-the-public-interest-a-handbook-for-legal.html>

Aside from representing milestones in the litigation process, all these aspects should be considered when designing the case strategy. Depending on the particulars of the case, what is available for adequately tackling each step will give the lawyer a sense as to the likelihood of success, potential risks, additional needs and resources, and will help first in deciding, within the case screening process, what can become a successful strategic litigation case, and second in designing the adequate strategy for it.

Other aspects which may be relevant for the case selection could include the financial means available as compared to the needs the case is expected to raise, “the evidence is available to build” the case upon, and, for strategic cases in particular, how representative the story is for a particular type of rights violations which affect a specific community or part of it.

The effect that losing the case will have both on the cause and the client must be considered early on and must be thoroughly explained to the client right from the very beginning. While in strategic litigation cases the interest of furthering the cause the case stands for comes in parallel with the client’s particular stakes in winning the case, they should not go against each other, and the strategy to follow, in agreement with the client, should be the best one for both types of interests.

The ERRC, MPG, Interights guide mentioned above paints the portrait of the “Ideal” Plaintiff which would not only be a trustworthy and friendly person, but would also have a personal history able to impress and move beyond the facts of the case.³⁶ However, this portrait should be taken for what it is: ideal for the purposes of winning a case, and the aspects enumerated in the guide should not be seen as prerequisites for taking a case. Although the person matters when one generally tries to convince a court to do or interpret things differently from what was the standard practice, and while issues of credibility are crucial for any legal case, the most vulnerable clients usually have complicated histories behind them and are never “ideal”.

As for evidence, aside from the procedural aspects typical of discrimination cases discussed below, it is particularly important for lawyers to be acquainted with

36.- European Roma Rights Centre, Interights, Migration Policy Group (2004) *Strategic litigation of race discrimination in Europe: from principles to practice*, Russell Press Limited, pp. 35-41, available at: <http://www.errc.org/cms/upload/media/00/C5/m000000C5.pdf>

general case-law at EU and international level. The field of anti-discrimination and hate-crime being an evolving one still, it is important to understand how such cases can be successfully argued and won. In matters of hate-crime for example, where bias must be proven, it is important for the lawyer defending the alleged Roma victim to be aware of how law enforcement officials are supposed to conduct the investigation of bias-motivated crime and also be on the watch for any possible bias in that investigation to begin with. For a comprehensive overview of hate crime legislation from both a substantive and procedural point of view see: OSCE, ODIHR's Hate crime laws handbook available at: <http://www.osce.org/odihr/36426>

From among the matters discussed and explained in the guides mentioned above and probably elsewhere, we would like to insist on and detail here a number of aspects in relation to litigation on behalf of the Roma:

- Given the high level of rejection that Roma face, before choosing strategic litigation, be very aware and understand the potential negative retaliatory effects that strategic litigation may trigger both for your cause and particularly on the individual victim and/or family or community, and make sure that your client (the victim) is also aware and understands the risks s/he is taking, where such risks effectively exist;
- Devise a way to protect the victim against further victimization (i.e.. work with a local NGO which is close to the victim; depending on the case and the specific situation and where appropriate and not counterproductive, consider building a media campaign around the case, which may deter further negative action against the victim; empower and provide psychological support to the victim and those around her/him; etc...) and consider that you may need to take further legal action in support of the victim;
- Where the main litigator is not from the same country as the victim (particularly before the ECtHR) make sure that s/he works with local lawyers and understands the particular legal culture and rights awareness among judges and the degree of accountability of state structures towards citizens in the particular country;
- Where the losing party must pay the other's judicial expenses, make sure that these are also covered.

This being said, we cannot stress enough how important litigation on behalf of the Roma is, given the widespread discrimination faced by this minority and the very limited capacity of civil society to address rights violations using legal means

C. Applicable legislation and its implementation

Discrimination is generally sanctioned by civil or administrative means. Particularly serious forms of discrimination (e.g. hate speech) are generally sanctioned criminally. When discrimination is identified as motive underlying otherwise regular criminal offences, it amounts to hate-crime and is always sanctioned criminally, usually as an aggravating circumstance to the offence. There may be variations to these general rules (criminal sanctioning of discrimination for instance), depending on how seriously the legislature of a particular country takes specific discrimination deeds.

Also the legal framework surrounding discrimination, the form and severity of sanctions, etc. may vary from one country to the next. Yet, there is a common denominator, since different international and European organisations (UN, Council of Europe, European Union, etc.) have imposed obligations on their member states to ensure a certain level of protection against discrimination, thus creating standards which must be guaranteed by states. Also, once a state complies with international standards, this does not mean that it cannot adopt more protective or extensive national provisions, in fact, states are encouraged to go beyond the minimum level. It is precisely because states go further than the minimum requirements that international human rights law progresses and new, more advanced and comprehensive standards emerge.

At international level, all the European Union Member States are party to the majority of the most important United Nations human rights treaties, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the

Convention on the Rights of the Child, and have ratified or signed the Convention on the Rights of Persons with Disabilities.³⁷ Also, all the EU Member States have joined the Council of Europe's most important treaty on human rights: the European Convention for the Protection of Human Rights and Fundamental Freedoms. All these instruments contain provisions prohibiting discrimination.

The European Union has also developed its legal framework on combating discrimination, racism and xenophobia.

For the purposes of this guide, the relevant provisions of the legislation developed by the European Union and by the Council of Europe, imposing minimum standards on member states for protection against discrimination, are described below. The role of the competent courts as well as relevant case-law is also briefly presented.

I. Anti-discrimination in the European Union

The following instruments have been adopted at **European Union level**, for the purpose of harmonizing the legislation of Member States in the field of anti-discrimination and combating racist and xenophobic offences:

- The two Anti-discrimination Directives: Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (hereinafter '**Racial Equality Directive**' or '**Directive 2000/43/EC**') and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (hereafter '**Employment Equality Directive**' or '**Directive 2000/78/EC**');
- **Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.**

37.- See Regional Office for Europe of the UN High Commissioner for Human Rights., *The European Union and International Human Rights Law*, page 7, available at http://www.europe.ohchr.org/Documents/Publications/EU_and_International_Law.pdf. For more information on the listed human rights treaties and the mechanisms for enforcing their provisions see Interights (2011) *Non-Discrimination in International Law, A handbook for Practitioners*, available at <http://www.interights.org/document/153/index.html>

There are other instruments which have general relevance for anti-discrimination such as **Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime** which has specific importance.

These instruments are binding on EU Member States.³⁸ The proper transposition and implementation of their provisions are ensured by the European Commission, meaning that where a Member State fails to properly fulfil its obligation, the European Commission can take action against that state for non-compliance and, if necessary, it may refer the case to the Court of Justice of the European Union (CJEU)³⁹ which has the power to sanction the state.

The CJEU also has the power to review the legality of acts of EU institutions and, at the request of national courts, interprets EU law, with the goal of having a uniform application and interpretation of EU law.⁴⁰

As to the role it plays with regard to national jurisdictions, when courts in member states are in doubt about the interpretation or validity of an EU law, they may turn to the CJEU for advice which is called “preliminary ruling”.⁴¹

For a short presentation of the CJEU, its jurisdiction and the proceedings before it, see the 2010 publication of the Court of Justice of the European Union: *Composition, jurisdiction and procedures*, available at http://curia.europa.eu/jcms/upload/docs/application/pdf/2012-05/cjue_en.pdf.

38.- In case of directives see Art. 288 of the Treaty on Functioning of the European Union as amended by the Lisbon Treaty and in case of framework decisions see Art. 34 (2) b of the Consolidated version of the Treaty on European Union as amended by the Treaty of Nice.

39.- In case of directives see Art. 258 of the Treaty on Functioning of the European Union as amended by the Lisbon Treaty. In case of framework decisions, the Commission will have this power only starting with 1 December 2014 – see Art. 10 of Protocol No. 36 of the Treaty on European Union, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008M/PRO/36:EN:HTML>

40.- Information available on the webpage of the Court of Justice of the European Union at http://curia.europa.eu/jcms/jcms/Jo2_6999/

41.- Europa.eu, *Court of Justice of the European Union*, available at http://europa.eu/about-eu/institutions-bodies/court-justice/index_en.htm. See also, in case of directives, Art. 19 3(b) of the Treaty on Functioning of the European Union as amended by the Lisbon Treaty. In case of framework decisions, the CJEU will have such power starting with 1 December 2014 – see Art. 10 of Protocol No. 36 of the Treaty on European Union.

1. The Anti-discrimination Directives⁴²

These Directives must be understood to establish minimum standards for the protection of the principle of equal treatment, but in no way prevent Member States from adopting more extensive national provisions. They also prohibit states from lowering their level of protection against discrimination in cases where it already surpasses the minimum standards laid down in the directives.⁴³

The two directives are different in purpose and scope. While they both aim to “lay down a framework for combating discrimination” the Race Equality Directive covers the grounds of race and ethnic origin in the fields of:

- employment (including issues related to access, self-employment, occupation, selection and recruitment, promotion, vocational training issues, working conditions, dismissals and pay, involvement in workers’ or employers’ organizations, other professional affiliations);
- social protection including social security and healthcare, social advantages;
- education;
- access to and supply of goods and services which are available to the public, including housing;

while the Employment Equality Directive covers the grounds of religion or belief, disability, age and sexual orientation but only in the field of employment and what is related to it (see above in between brackets).

The grounds of religion or belief, disability, age and sexual orientation are therefore less protected than the grounds of race and ethnic origin. A **proposal for a Council Directive** on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation was

42.- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML> and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>.

43.- Art. 6 of the Race Equality Directive and art. 8 of the Employment Equality Directive

presented in 2008 by the Commission aiming at extending the level of protection, but has not yet been adopted.⁴⁴

The directives define and prohibit various forms of discrimination and related concepts: direct and indirect discrimination, harassment, as well as instruction to discriminate. They also provide for protection of individuals from victimisation. (See Glossary defining these terms).

An important provision for combating discrimination included in the Directives provides for the legal standing of NGOs in cases of discrimination. States therefore have to ensure that associations, organisations or other legal entities, which have a legitimate interest in ensuring equal treatment according to the provisions of the Directives, may engage in judicial and administrative procedures on behalf or in support of persons who consider themselves victims of discrimination, with their consent.

Another important provision from a procedural perspective is related to the burden of proof which, in discrimination cases, falls mainly on the person against whom a complaint is filed. **Reversal of the burden of proof** means that if a person claims to be a victim of discrimination, s/he must establish before the court or other competent authorities “facts from which it may be presumed that there has been direct or indirect discrimination”, and it is incumbent upon the respondent to prove that there has been no discrimination.⁴⁵ However, the Directives clearly state that this reversal does not apply to criminal proceedings.⁴⁶

Given the specificities of relations in the field of employment, the Directives allow Member States to provide for justification of discrimination on the protected grounds in this field, where the difference in treatment is a genuine and determining occupational requirement, as long as the objective is legitimate and the requirement is proportionate.⁴⁷

44.- Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation {SEC(2008) 2180} {SEC(2008) 2181} /* COM/2008/0426 final - CNS 2008/0140 */ , available at: <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52008PC0426>

45.- Art. 8 of the Race Equality Directive and art. 10 of the Employment Equality Directive

46.- Art 8(3) of the Race Equality Directive and art. 10 (3) of the Employment Equality Directive.

47.- Art. 4 of both Directives.



The Racial Equality Directive requires Member States to set up an **independent equality body** or bodies with competencies which must include: providing assistance to victims of discrimination in pursuing their discrimination complaints, conducting surveys concerning discrimination and publishing reports and making recommendations on any issue relating to such discrimination.⁴⁸ Thus, this obligation concerns only discrimination on the ground of racial or ethnic origin. However, according to the European Commission, in most Member States (except of Denmark, Italy, Malta, Portugal, Spain and Finland), the mandate of the national equality body also covers the grounds of religion or belief, disability, age and sexual orientation, and, in the case of 15 Member States, even other grounds, such as nationality, language, political opinion, etc.⁴⁹

Also, in many Member States the powers of the equality body and the fields of life they cover go beyond the requirements of the Directives. There are differences among member states as concerns the structures of the equality bodies, their resources and competences – some bodies have an advisory and promotional role while others have quasi-judicial competence.⁵⁰ For information on the **equality body(ies) in each Member State**, their competencies, powers, activities and structure as well as information about the grounds and fields of discrimination they cover, see Equinet European Network of Equality Bodies, *Equinet Members* at <http://www.equineteurope.org/-Member-organisations->

A shortcoming of the Directives is the fact that they do not oblige member states to collect **data on equality**, which prevents member states from properly monitoring the Directives' implementation. Statistical data is accepted in many states as evidence for proving discrimination. Several member states refuse to collect equality data invoking national data protection laws, but it should be noted that data collection for statistical purposes is allowed under the EU law (under Directive 95/46/EC of the European Parliament and of the Council of 24

48.- Art. 13 of the Race Equality Directive

49.- European Commission, *Report from the Commission to the European Parliament and the Council, Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive')*, COM(2014) 2 final, 17.01.2014, p. 12, available at http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf

50.- *Ibid.*

October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data)⁵¹.

According to the European Commission, by January 2014, all the Member States have taken the necessary measures to transpose the two Directives into their national legal systems and to set up the procedures and bodies that are indispensable for the implementation of these Directives. However, challenges still exist in their implementation.⁵²

Information on the **legislation in the field of non-discrimination in each member state** as well as **country reports on measures to combat discrimination** as of 1 January 2013 can be found on the webpage of the European Network of Legal Experts in the Non-discrimination Field at <http://www.non-discrimination.net/>

The Roma, as an ethnic group, fall directly within the scope of the Race Equality Directive. However, they may also be protected based on other grounds under the provisions of the Employment Equality Directive.

2. Framework Decision on combating certain forms and expressions of racism and xenophobia⁵³

Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia adopted on 28 November 2008, aims at fighting racist and xenophobic hate speech and hate crime across the European Union by means of criminal law⁵⁴.

Thus, member states have to ensure that effective, proportionate and dissuasive penalties are in place to deal with natural and legal persons committing such

51.- *Ibid.*, p. 6.

52.- *Ibid.*, pp. 3, 4, 15,.

53.- Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:328:0055:0058:en:PDF>.

54.- European Commission, DG Justice, *Framework Decision*, available at http://ec.europa.eu/justice/fundamental-rights/racism-xenophobia/framework-decision/index_en.htm.

crimes against groups of persons or a member of such a group due to their race, colour, religion, descent or national or ethnic origin⁵⁵.

The Framework Decision covers the following racist and xenophobic offences directed against a group of persons or a member of such a group defined on the basis of their race, colour, religion, descent or national or ethnic origin⁵⁶:

- publicly inciting to violence or hatred;
- public dissemination or distribution of tracts, pictures or other material inciting to violence and hatred;
- publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes, as defined under Articles 6, 7 and 8 of the Statute of the International Criminal Court and crimes defined under Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945 (commonly known as the Nuremberg Tribunal). Instigation to such conduct is also punishable.

Aiding and abetting in commission of the offences listed above should also be punished by the Member States⁵⁷.

Furthermore, the Framework Decision asks Member States to take measures to ensure that racist and xenophobic motivation is considered as an aggravating circumstance or that the courts take such motivation into consideration when determining penalties⁵⁸.

Member States had to transpose into their national legislation the obligations foreseen by the Framework Decision by 28 November 2010. By January 2014, all the Member States had communicated to the Commission the national

55.- European Commission, *Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law*, COM(2014) 27 final, pp. 2-3, available at http://ec.europa.eu/justice/fundamental-rights/files/com_2014_27_en.pdf.

56.- Art. 1 (1) and Art 2 (1) of Council Framework Decision 2008/913/JHA of 28 November 2008.

57.- Art 2 (2) of Council Framework Decision 2008/913/JHA of 28 November 2008.

58.- Art. 4 of Council Framework Decision 2008/913/JHA of 28 November 2008.

transposing measures taken in order to comply with the Framework Decision. The **list of transposing legislation in all the Member States** is available at: http://ec.europa.eu/justice/fundamental-rights/files/swd_2014_27_en.pdf ⁵⁹.

However, the Commission notes that a number of Member States have not fully and/or correctly transposed all the provisions of the Framework Decision. For a **comparative analysis of transposition of the obligations** imposed by the Framework Decision by the Member States see http://ec.europa.eu/justice/fundamental-rights/files/com_2014_27_en.pdf⁶⁰.

3. Directive establishing minimum standards on the rights, support and protection of victims of crime⁶¹

In the context of protection of the right to non-discrimination, **Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime** should also be considered.

This Directive outlines the rights of victims in criminal proceedings, such as right to information, right to interpretation and translation, right to be heard, right to support and protection, right to legal aid, etc. The aim of the Directive is to ensure that in Member States the victims of crime “receive appropriate information, support and protection and are able to participate in criminal proceedings” and that these victims “are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner” throughout the proceedings.⁶²

59.- European Commission, *National transposition measures and Data on application of the Framework Decision submitted by the Member States, Accompanying the document Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law*, COM(2014) 27 final, available at http://ec.europa.eu/justice/fundamental-rights/files/swd_2014_27_en.pdf

60.- European Commission, *Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law*, COM(2014) 27 final, available at http://ec.europa.eu/justice/fundamental-rights/files/com_2014_27_en.pdf

61.- Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN%29>

62.- Art 1(1) of Directive 2012/29/EU.

Victims of crimes should also have their cases individually assessed so that their specific protection needs can be identified and the necessity and extent of special measures in the course of criminal proceedings can be determined. Moreover, the Directive stresses that in the context of this individual assessment, special attention must be given to certain categories of victims, including “victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics”⁶³.

In addition, the Directive refers to general and specialist training of practitioners who deal with victims (police officers, court staff, judges and prosecutors involved in criminal proceedings, **lawyers**, personnel providing support services and restorative justice services, etc... to victims) with a view to making these practitioners aware of the specific needs of victims⁶⁴.

Member States have to transpose the Directive into their national legislation until 16 November 2015. Member States already had to implement obligations on the rights of victims in criminal proceedings under the Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings⁶⁵.

The last evaluation of the European Commission on the transposition of the Framework Decision in Member States was performed in 2009, and reflects the situation up to 15 February 2008. See *Report from Commission pursuant to Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings* at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52009DC0166> and the *Accompanying document*, providing information on the transposing legislation of the Framework Decision by articles in each member State at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2009:0476:FIN:EN:PDF>.

Directive 2012/29/EU replaced the Framework Decision which proved to be “insufficient to properly address the needs of victims and ensure they benefit

63.- Art. 22(3) of Directive 2012/29/EU.

64.- Art. 25 of Directive 2012/29/EU.

65.- Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001F0220:en:HTML>

from procedural rights in the Member States”⁶⁶ and lays down much more comprehensive and detailed provisions, with a particular focus on vulnerable victims and their needs, among whom victims of hate crimes are particularly mentioned. More specifically, the Directive includes the standards established in the Framework Decision regarding the rights to access to information, support and protection services as well as basic procedural rights in criminal proceedings, but it strengthens these rights and imposes more specific obligations on Member States.⁶⁷

For more information on the difference between the Framework Decision and the Directive (the rights and obligations strengthened by the Directive and the new rights and obligations imposed thereby), see information on the webpage of the European Commission at http://ec.europa.eu/justice/criminal/victims/rights/index_en.htm.

The Directive protects the right to understand and to be understood, meaning that, during communication between the victim and the competent authorities, the personal characteristics of the victims, “including any disability which may affect the ability to understand or to be understood” must be taken into consideration, and that the authorities must communicate in an appropriate manner in this regard (e.g. in simple and accessible language, orally or in writing). Furthermore, victims may be accompanied by a person of their choice in their first contact with authorities where “due to the impact of the crime, the victim requires assistance to understand or to be understood”.⁶⁸ The right to interpretation and translation for the victims who do not understand the language of the proceedings is another important provision of the directive.⁶⁹

The Directive describes general victim protection measures/rights: the right to protection of victims and family members from secondary and repeat victimisation, intimidation and retaliation, including against the risk of emotional or psychological harm and to protection of dignity during questioning and when

66.- See information on the webpage of the European Commission at http://ec.europa.eu/justice/criminal/victims/index_en.htm

67.- See information on the webpage of the European Commission at http://ec.europa.eu/justice/criminal/victims/rights/index_en.htm

68.- Art. 3 of Directive 2012/29/EU.

69.- Art. 7 of Directive 2012/29/EU.

testifying,⁷⁰ the right of victim and family members to avoid contact with the offender unless the criminal proceedings so require (including separate waiting areas in new court premises),⁷¹ interviews of victims to be conducted without unjustified delay, their number kept to a minimum and conducted only where strictly necessary, victims to be accompanied by their legal representative and a person of their choice unless a reasoned decision to the contrary exists, medical examinations to be kept to a minimum and performed only where strictly necessary,⁷² right to protection of privacy including in what regards personal characteristics (such as belonging to a vulnerable group) with member states having to encourage the media to self-regulate in this sense.⁷³

A particularly important aspect of the Directive is the provision for individual assessment of the victims to identify specific protection needs with a view to adopt special measures in the course of criminal proceedings to avoid secondary and repeat victimisation, intimidation and retaliation. The individual assessment, to be performed on an individual basis and in a timely manner, would have to take into account the following: the personal characteristics of the victim, the type and nature of the crime and the circumstances of the crime. The directive clearly specifies what it refers to in relation to the individual assessment: “victims of terrorism, organized crime, human trafficki, gngender-based violence, exploitation or hate crime and victims with disabilities shall be duly considered”. Children are considered to have specific protection needs to begin with, and they can additionally also be assessed when they are victims of severe crimes such as those enumerated above, in order to determine any additional specific protection measures needed. The assessment must be made with the close involvement of the victim, taking into account their wishes, included the wish not to benefit from special measures.⁷⁴

Once a victim is identified as having specific protection needs, s/he has the right to benefit from specific procedural protection measures. The directive lays down a number of such measures which have to be made available:

70.- Art. 18 of Directive 2012/29/EU.

71.- Art. 19 of Directive 2012/29/EU.

72.- Art. 20 of Directive 2012/29/EU.

73.- Art. 21 of Directive 2012/29/EU.

74.- Art. 22 and Art. 23 of Directive 2012/29/EU.

- to be interviewed in premises designed or adapted for such purpose, by or through trained professionals, by the same person unless contrary to the good administration of justice;
- for victims of sexual violence, gender-based violence or violence in close relationships to be interviewed by a person of the same sex if one so wishes, unless the interview is conducted by a prosecutor or judge and provided that it does not prejudice the course of the criminal proceedings;
- to avoid visual contact with offender (for the purposes of this Directive this also means the accused person who has not yet received a final judgement), including while giving evidence; the use of technology is an appropriate option to this end;
- to be heard in the courtroom without having to be present, also through the use of communication technology;
- not to be unnecessarily questioned concerning one's private life not related to the criminal offence;
- to benefit from measures allowing not to be heard in the presence of the public.⁷⁵

The directive specifically includes in the definition of victim the family members of those deceased as a result of the criminal offence and who have suffered harm as a result. Family members are defined as “the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings, the dependants of the victim”.⁷⁶ It is up to Member States to establish the procedures for limiting the number of family members and to prioritize the family members who can benefit from and exercise the rights which the Directive provides for.⁷⁷

All the provisions of Directive 2012/29/EC described above are extremely relevant for Roma victims of hate crime, particularly in what regards protection measures during the proceedings. Furthermore, the specific mention of lawyers as one of the professional groups targeted to receive training to raise their awareness on the needs of victims represents a clear recognition of the importance of these

75.- Art. 23 of Directive 2012/29/EU.

76.- Art. 1 (a) (iii) of Directive 2012/29/EU.

77.- Art. 2 of Directive 2012/29/EU.

aspects and the essential role which lawyers play in proceedings and in supporting their clients' pursuit for justice.

II. Anti-discrimination in the Council of Europe

1. European Convention for the Protection of Human Rights and Fundamental Freedoms

As concerns the Council of Europe, Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter 'ECHR' or 'Convention') prohibits discrimination on any ground (such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status) in conjunction with rights and freedoms protected by the Convention.⁷⁸ Aside from the fact that the right not to be discriminated against is not a stand-alone right, article 14 was initially seen as applicable when corroborated with those rights foreseen in the articles of the ECHR.⁷⁹ This limitation was overcome by the Council of Europe by the adoption of Protocol 12, which prohibits discrimination in the enjoyment of not only the rights provided in the ECHR, but in general of any rights foreseen by law.⁸⁰ However, the Protocol is only binding for the Member States of the Council of Europe which ratified it.⁸¹ The list of Member States which ratified

78.- Art. 14 of the ECHR: *"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."*

79.- Right to life (Art. 2), Prohibition of torture (Art. 3), Prohibition of slavery and forced labour (Art. 4), Right to liberty and security (Art. 5), Right to a fair trial (Art. 6), No punishment without law (Art. 7), Right to respect for private and family life (Art. 8), Freedom of thought, Conscience and Religion (Art. 9), Freedom of Expression (Art. 10), Freedom of assembly and association (Art. 11), Right to marry (Art. 12), Right to an effective remedy (Art. 13).

80.- Art. 1.1 of Protocol 12 *"The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."*

81.- Council of Europe (2009) *Ensuring Access to Rights for Roma and Travellers, The Role of the European Court of Human Rights, A handbook for lawyers defending Roma and Travellers*,, p. 28, available at <http://www.coe.int/t/dg3/romatravellers/Source/documents/Ensuring%20access%20rights%20for%20Roma%20and%20Travellers%20-%20Handbook%20for%20lawyers%20EN.pdf>

Protocol 12 can be found on the webpage of the Council of Europe at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=177&CM=7&DF=18/03/2014&CL=ENG>.

By ratifying the **European Convention for the Protection of Human Rights and Fundamental Freedoms** and its Protocols, the contracting parties assume the obligation “to secure to everyone within their jurisdiction the rights and freedoms defined”⁸² in the Convention. However, the Convention does not prevent the contracting states from providing more comprehensive protection in their national legal systems, nor does it impose uniform rules applicable to contracting states.⁸³

The role of the European Court of Human Rights (hereafter ‘ECtHR’ or ‘the Court’) is to ensure that the contracting states comply with their obligations assumed under the Convention and the Protocols they have ratified.

Complaints can be filed with the Court only against contracting states which allegedly violated the human rights included in the Convention and, as a general rule only after the domestic remedies have been exhausted. For more information see the ECtHR’s *Practical Guide on Admissibility Criteria* (2011), available at: http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf.

Interpretation of Article 14 by the ECtHR

Art. 14 reads as follows:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The list of grounds in Article 14 is not exhaustive as indicated by the expression “any ground such as”. Since the drafting of the Convention the Court has also ruled on grounds such as disability or sexual orientation.⁸⁴

82.- Art. 1 of the ECHR.

83.- Council of Europe (2009) *Ensuring Access to Rights for Roma and Travellers, The Role of the European Court of Human Rights, A handbook for lawyers defending Roma and Travellers*,, p. 14, available at <http://www.coe.int/t/dg3/romatravellers/Source/documents/Ensuring%20access%20rights%20for%20Roma%20and%20Travellers%20-%20Handbook%20for%20lawyers%20EN.pdf>

84.- *Ibid.*, p 28.

According to the Court in the *Timishev v. Russia* case “ethnicity and race are related and overlapping concepts. Whereas the notion of race is rooted in the idea of biological classification of human beings into subspecies according to morphological features such as skin colour or facial characteristics, ethnicity has its origin in the idea of societal groups marked by common nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and backgrounds” (*Timishev v. Russia*, App. nos. 55762/00 and 55974/00, Judgment date 13 December 2005, paragraph 55).⁸⁵

In *DH v. the Czech Republic*, the Court also notes that situations when a State treats different groups differently in order to correct “factual inequalities” between them (such as Roma in relation to other groups) does not represent discrimination. However, it remarks that, in certain circumstances, the failure to treat different groups differently may result in discrimination. The Court has also stated that a general policy or measure, even if it does not target a specific group, but it has “disproportionately prejudicial effects” on that group, may be considered discriminatory. (See *DH v. The Czech Republic*, Application No. 57325/00, Judgment date 13 November 2007, paragraph 175)⁸⁶

2. European Social Charter

The European Social Charter is another Council of Europe Convention, which was revised and expanded in 1996. It includes a number of rights which are of particular importance to the Roma since they address: housing, health, education, employment, legal and social protection and free movement of persons. However, it allows for states not to be bound by all of its articles, but only by a selection of articles according to rules laid down by the Charter which also established a minimum number to be ratified. The Charter includes a non-discrimination clause which reads as follows: “The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”⁸⁷

85.- *Ibid*, p 28.

86.- *Ibid.*, p 28.

87.- For the text of the Charter and Status of ratifications, see: <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=163&CM=8&CL=ENG>.

The Charter also has an additional protocol from 1995 which provides for collective complaints,⁸⁸ i.e. the Additional Protocol to the European Social Charter providing for a system of collective complaints. Under this Protocol, international organizations of employers and trade-unions which already have a certain role within the Charter mechanism, other international non-governmental organizations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee, representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint, or other national NGOs with competence in a specific field upon recognition of this right for the particular NGO by the state party in question, may submit complaints alleging unsatisfactory application of the Charter. The application is reviewed by the European Committee of Social Rights which then adopts a decision.

While the decision is not binding on the state concerned, such cases can raise important public attention on the issue of concern. The European Roma Rights Centre has successfully used this mechanism on behalf of the Roma against Bulgaria, France, Greece, Italy and Portugal, most of the cases being related to the right to adequate housing.⁸⁹

88.- For the text of the Protocol and status of ratifications, see:

<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=158&CM=8&CL=ENG>.

89.- European Roma Rights Centre presentation of cases under the European Social Charter available here: <http://www.errc.org/strategic-litigation-european-social-charter>.

III. Relevant Case-law regarding non-discrimination of Roma

1. Court of Justice of the European Union (CJEU)

The CJEU has not yet handed down any rulings in cases specifically focusing on Roma.⁹⁰ According to the European Commission, “Roma-specific problems seldom derive directly from legislation, but usually stem from how the relevant legislation is applied on the ground”.⁹¹

The CJEU has mostly ruled on cases concerning discrimination on the ground of age. On the grounds of racial or ethnic origin, disability or sexual orientation, it has dealt only with a limited number of issues such as: the prohibition of an employer’s general announcement to discriminate (case *Firma Feryn*⁹²), the definition of disability (case *Chacón Navas* and joined cases *Ring and Skouboe Werge*⁹³), or the exclusion of same-sex partners from work-related benefits reserved for heterosexual couples (cases *Maruko* and *Römer*⁹⁴)⁹⁵.

90.- European Commission, *Report from the Commission to the European Parliament and the Council , Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive')*, COM(2014) 2 final, 17.01.2014, p. 13 , available at http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf

91.- *Ibid.*, p. 12.

92.- Case C-54/07, *Firma Feryn NV*, judgment of 10 July 2008 .

93.- Case C-13/05, *Chacón Navas*, judgment of 11 July 2006 and Joined Cases C-335/11 and C-337/11, *Ring and Skouboe Werge*, judgment of 11 April 2013.

94.- Cases C-267/06 *Tadao Maruko*, judgment of 1 April 2008 and C-147/08 *Jürgen Römer*, judgment of 10 May 2011.

95.- European Commission, *Report from the Commission to the European Parliament and the Council, Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive')*, COM(2014) 2 final, 17.01.2014, p. 8 , available at http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf

In the context of racial or ethnic discrimination, mention must be made of the case of *Firma Feryn*⁹⁶. In this case, the Court interpreted the following articles of Directive 2000/43/EC: Art. 2(2) – direct discrimination, Art. 8(1) – burden of proof and Art. 15 – sanctions.

The Belgian Equality Body (*Centre for equal opportunities and combating racism*) filed a legal action before the national courts against Firma Feryn, whose director publicly stated that the firm did not want to employ immigrants. The first instance dismissed the case on the grounds that there was no victim of discrimination identified. The appeal court referred questions regarding the above mentioned articles to the Court for a preliminary ruling.

The Court stated that there is no need to identify a victim in order to determine the existence of discrimination.⁹⁷ Moreover, associations with a legitimate interest in ensuring compliance with the Directive's provisions and the equality bodies, if foreseen by the national legislation, can take legal or administrative action without being mandated by a specific complainant and also if the complainant is not identifiable.⁹⁸ According to the Court, the fact that the employer publicly declared that it does not recruit persons of certain ethnic or racial origin, creates an impediment for such persons to access the labour market, thus amounting to direct discrimination.⁹⁹

Regarding the reversal of the burden of proof within the meaning of Article 8(1), the Court noted that the existence of a discriminatory recruitment policy could be presumed from the statement made by the employer of not hiring persons of certain ethnic or racial origin. Thus, the burden of proving that it does not have such a recruitment practice and that it did not discriminate on the grounds of racial and ethnic origin rests with the employer¹⁰⁰.

As far as the sanction for discrimination is concerned, the court ruled that, according to Art. 15 of the Directive, even if there is no identified victim, the sanction must be effective, proportionate and dissuasive. According to the Court,

96.- Case C-54/07, *Firma Feryn NV*, judgment of 10 July 2008

97.- Case C-54/07, *Firma Feryn NV*, judgment of 10 July 2008 , paragraph 25

98.- Case C-54/07, *Firma Feryn NV*, judgment of 10 July 2008, paragraph 27

99.- Case C-54/07, *Firma Feryn NV*, judgment of 10 July 2008, paragraph 25

100.- Case C-54/07, *Firma Feryn NV*, judgment of 10 July 2008, paragraph 29-34

if appropriate in the case, sanctions may take the following forms: finding of discrimination by the court or the competent administrative authority in conjunction with an adequate level of publicity, whose cost is to be borne by the defendant, or an injunction ordering the employer to cease the discriminatory practice or a fine, or awarding damages to the body which brought the proceedings.¹⁰¹

For more information on **case law of the CJEU and of national courts** see the publication of the European Commission *Annexes to the Joint Report on the application of the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC), Annex II Summary of case-law*, pp. 12-35, available at http://ec.europa.eu/justice/discrimination/files/swd_2014_5_en.pdf

2. European Court of Human Rights (ECtHR)

There are a good number of cases regarding Roma in the ECtHR jurisprudence. The ECtHR has compiled an informative fact-sheet, which we recommend consulting at: http://www.echr.coe.int/Documents/FS_Roma_ENG.pdf. Depending on the type of rights violations in each case, the Court factsheet lists a number of issues it has ruled on in relation to the Roma, including: obligation of Roma/ Travellers to leave the land where they were stationed; attacks on Roma villages and destruction of property; racially biased police investigations; forced sterilisations of Roma women; segregation in schools, etc...

For relevant interpretations we recommend consulting all the cases dealing with discrimination summarized in factsheets compiled by the ECtHR, available here: http://www.echr.coe.int/Pages/home.aspx?p=press/factsheets&c=#n1347890855564_pointer. For more focused information in relation to the Roma minority and the ECtHR see the Council of Europe publication entitled: *Ensuring Access to Rights for Roma and Travellers, The Role of the European Court of Human Rights, A handbook for lawyers defending Roma and Travellers* (2009), available at <http://www.coe.int/t/dg3/romatravellers/Source/documents/Ensuring%20access%20rights%20for%20Roma%20and%20Travellers%20-%20Handbook%20for%20lawyers%20EN.pdf>.

101.- Case C-54/07, *Firma Feryn NV*, judgment of 10 July 2008, paragraph 38-39.

3. Relevant national court case-law

Following is a case which, while occurring at national level, bears significance in today's EU where the Roma seem to be unwelcome in many Western democracies as well.

In the Italian case of *XY, Associazione 21 luglio, ASGI - Associazione Studi Giuridici sull'Immigrazione and Open Society Justice Initiative v. the Prime Minister's Office, the Rome Prefecture and the Ministry of Home Affairs*, the claimant XY, a Roma Italian national was taken to the Immigration Office of the Police Headquarters of Rome in order to be identified through fingerprinting and photographing, although he was in possession of a valid national ID card. The action took place in the context of the dismantling of an encampment where nomad communities (mostly Roma) were living, based on an order issued by the Prime Minister's Office (Order No. 3676 of 30 May 2008) for monitoring encampments of nomad communities in the territory of Latium and identification and survey of all persons, including under age persons and family groups "by way of fingerprinting and mug shots" irrespective of whether they were authorized to stay or not. The aim of these administrative activities was to overcome the "emergency situation" arisen due to the settlement of "many non-EU nationals, whether without residence permits or nomads" in the territory of Latium.¹⁰²

In its decision¹⁰³, the Court of Rome noted that even if the identification activities were "not specifically aimed at discriminating the Roma community", they were "addressed in practice especially to the members of that community and this connotation was undoubtedly visible from the outside", thus creating a hostile environment, as the general public has associated the Roma ethnicity of the persons living in the encampment with the "situation of social perturbation" which these activities were meant to remedy. The Court also held that the method of identification, i.e. fingerprinting and photographing individuals holding valid ID cards "was against the law, invasive of personal liberty and not justified by any specific needs", violating the claimant's dignity.

102.- Order No. 49444/2012 of the Court of Rome, Second Civil Division, point 3.1, available at <http://www.opensocietyfoundations.org/sites/default/files/domestic-salkanovic-ruling-eng-20130524.pdf>. See also European Roma Rights Center, Factsheet on the State of Emergency: Italy's Disastrous Policies for Roma, available at <http://www.errc.org/cikk.php?cikk=4114> .

103.- Order No. 49444/2012 of the Court of Rome, Second Civil Division, available at <http://www.opensocietyfoundations.org/sites/default/files/domestic-salkanovic-ruling-eng-20130524.pdf>

D. Good practices

D.H. and others vs. the Czech Republic

This was a major case that was won before the Grand Chamber of the ECtHR in 2007 against the Czech Republic, regarding school segregation. The Court, based on a case from the town of Ostrava, decided that school segregation of Roma students into special schools (for children with intellectual disabilities) is a violation of Art. 14 of the Convention (the right not to be discriminated against) in conjunction with Art. 2 of Protocol 1 (securing the right to education) to the Convention.

In addition to other important legal precedents in the area of discrimination which this case establishes (no intent needed for discrimination to occur, segregation is discrimination), the case is also interesting from the point of view of building evidence and the use of specific arguments before the ECtHR, which is why we include it in the section of best practice of this guide.

The European Roma Rights Centre, which supported the case, also created evidence for the case. It conducted research in Ostrava related to the case and presented its findings in court showing that: over half of the Romani child population attends special schools, over half of the population of remedial (special) schools is Romani or that any randomly chosen Romani child is more than 27 times more likely to be placed in for children with learning disabilities than a similarly situated non-Romani child.¹⁰⁴

104.- ERRC (2008) *Ostrava case: D.H and others vs the Czech Republic*, available at: <http://www.errc.org/cikk.php?cikk=2945>

In addition, eight human rights NGOs (including Interights, Minority Rights Group and Human Rights Watch) submitted third party interventions (*amicus curiae*) in the case,¹⁰⁵ which showed to the Court how important the case was not only for the particular situation in Ostrava, but also to the international human rights community in general.

Unfortunately, despite the favourable decision and legislative changes introduced even before the final decision was delivered, the implementation of the decision, remains, as yet, ineffective.¹⁰⁶ The case also shows that, when it comes to discrimination winning the cases is not sufficient to bring about effective change. Much subsequent work is needed to enforce such decisions, and changing attitudes towards the Roma is essential.¹⁰⁷

105.- ERRC (2008) *Ostrava case: D.H and others vs the Czech Republic*, available at: <http://www.errc.org/cikk.php?cikk=2945>

106.- Stanislav Daniel (2012), "The Legacy of D.H. and others: Four Years After" in *Roma Rights 2011: Funding Roma Rights: Challenges and Prospects*, ERRC, available at: <http://www.errc.org/roma-rights-journal/roma-rights-2011-funding-roma-rights-challenges-and-prospects/4062/5>

107.- A comprehensive description of the case, from a strategic litigation strategy can be found in Goldston, James A and Adjami Mirna (2008) *The Opportunities and Challenges of Using Public Interest Litigation to Secure Access to Justice for Roma Minorities in Central and Eastern Europe*, Preliminary Draft, Subject to revision, Prepared for World Justice Forum, Vienna, July 2-5, 2008, pp. 33-42, retrieved from: http://www.lexisnexis.com/documents/pdf/20080924043559_large.pdf.

Legal clinics

Through legal clinics, law students, under the supervision of law professors or practicing lawyers, provide legal assistance to poor and marginalized clients, and are thus exposed to the problems these communities face, gain hands-on experience and are educated in the spirit of social justice and public service. The Open Society Institute introduced and supported the US originating concept in Central and Eastern Europe in 1997 and has continued to promote legal clinics throughout the world as part of a programme on Legal Aid and Community Empowerment Clinics since 2002.¹⁰⁸ While making progress in recent years¹⁰⁹ and despite the low financial commitments required, the EU seems to continue to lag far behind its potential in terms of establishing legal clinics¹¹⁰ and thus using their resources to provide extremely necessary legal service of particular importance for the poorest and most vulnerable, Roma included.

108.- Open Society Justice Initiative (2009) *Legal clinics. Serving people, improving justice*, p. 1, available at: http://www.opensocietyfoundations.org/sites/default/files/legalclinics_20090101.pdf

109.- Marguerite Angelari (2013), *Raising the Bar for Legal Education in Western Europe*, available at: <http://www.opensocietyfoundations.org/voices/raising-bar-legal-education-western-europe>

110.- See for example the small number of members and affiliates, also in Eastern Europe, to the European Network for Clinical Legal Education, available at: <http://encle.org/>

Community-based paralegals

The role of community-based paralegals is to assist vulnerable and excluded communities which do not have access to legal services and/or cannot afford them in resolving their justice problems. Paralegals are legally trained persons but are not licensed to practice law. They are also trained in alternative dispute resolution techniques. When they are community-based they usually come from the community. The Open Society has been developing and supporting such programmes in various countries across the world, but also in Europe, in some cases in relation to the Roma.¹¹¹ Community-based paralegals have enormous potential for upholding Roma rights also contributing to the community's legal empowerment. They are part of the framework of access to justice and human rights. The role of paralegal programs, as described by Open Society is as follows:

- “Work to meet the unmet needs of vulnerable populations;
- Recognize and attempt to address illegalities that reflect widespread injustices or human rights violations;
- Strengthen the capacities of communities and community members to understand and act on their rights;
- Promote advocacy from within communities, while taking leadership in policy and legal reform, as necessary.”¹¹²

111.- Sebastian Kohn, (2013) *For Roma, justice is sometimes the best medicine*, 12.11.2013, Open Society Foundations available at: <http://www.opensocietyfoundations.org/voices/roma-justice-sometimes-best-medicine>

112.- Open Society Justice Initiative (2010) *Community-based paralegals. A practitioner's guide*, available at: <http://www.opensocietyfoundations.org/sites/default/files/paralegal-guide-20101208.pdf>.

Glossary

Discrimination:

Forms of discrimination on grounds of racial or ethnic origin are defined in Article 2 of the Directive 2000/43/EC as follows:

1. “[D]irect discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin”;
2. “[I]ndirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”;
3. “Harassment shall be deemed to be discrimination [...] when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment”;
4. “Instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination [...]”

Victimization is “any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment” (as provided by Art. 9 of Directive 2000/43/EC and Art. 11 of Directive 2000/78/EC). *Note: the Directives do not consider victimisation*

as a form of discrimination, but encourage states to take measures to protect individuals against victimisation. However, in several jurisdictions, victimisation is considered a form of discrimination).

Hate crime - crimes motivated by intolerance towards certain groups in society. They consist of two elements: the act must be a crime under the Criminal Code and the crime must have been committed with a bias motivation. Bias motivation means that the perpetrator chose the target of the crime based on some protected characteristic. The target may be a person, people or property associated with a group that shares a protected characteristic. A protected characteristic is a fundamental or core characteristic shared by a group such as “race”, religion, ethnicity, language or sexual orientation, etc... (the source for this definition is the OSCE/ODIHR 2012 booklet *Understanding Hate Crimes* which we recommend consulting here: <http://www.osce.org/odihr/104168?download=true>).

Hate speech – all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin. (This definition appears in the Council of Europe, Committee of Ministers Appendix to Recommendation No. R (97) 20)



With financial support from the Fundamental Rights and
Citizenship Programme of the European Union
Project Code Number: JUST/2012/FRAC/AG/2848